

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**



**INVITATION FOR BIDS
CURTAILMENT SERVICES PROVIDER**

Solicitation Number: DCAM-16-NC-0101

Date Issued: April 8, 2016

Bid Due Date: April 13, 2016 by 2:00 pm

Delivery of Bids: Department of General Services
Contracts and Procurement Division, 8th Floor
Attention: Kimberly Gray
Frank D. Reeves Center
2000 14th Street NW
Washington, DC 20009

Bid Opening: April 13, 2016 at 2:15 pm

Contact: Jerusalem Belai
Contract Specialist
Contracts & Procurement Division
Frank D. Reeves Center
2000 14th Street, NW, 8th Floor
Washington, DC 20009
202-724-4108
jerusalem.belai@dc.gov

SECTION A EXECUTIVE SUMMARY

The District of Columbia Department of General Services (“DGS” or “Department”), Contracts and Procurement Division, is issuing this Invitation for Bids (“IFB”) to award a firm fixed unit price contract to a Curtailment Services Provider.

Demand Response is a consumer’s ability to reduce electricity consumption at their location when wholesale prices are high or the reliability of the electric grid is threatened. Demand Response is another competitive resource that can be used to maintain demand and supply in balance for grid operations and the associated wholesale markets. Retail electricity consumers tend to be unresponsive to wholesale prices. Therefore, as demand goes up, less efficient generators are called on to serve this demand. By reducing demand during these periods, the system and market potentially can avoid using less efficient generation resources to meet high demand.

A Curtailment Service Provider (“CSP”) is the entity responsible for demand response activity for electricity consumers in wholesale markets. A CSP may be a company that solely focuses on a customer’s demand response capabilities, a local electricity utility, an energy service company, or other type of company that offers these services. The CSP identifies demand response opportunities for customers and implements the necessary equipment, operational processes and/or systems to enable demand response both at the customer’s facility and directly into the appropriate wholesale market. This requires the CSP to have appropriate operational infrastructure and a full understanding of all the wholesale market rules and operational procedures.

A.1 CONTRACT TYPE:

A.1.1 The contract awarded pursuant to this IFB will be a firm fixed unit price contract.

A.2 FORM OF CONTRACT:

A.2.1 Contracts resulting from this IFB will typically include the following:

- (a) The Award/Signature Page (**Attachment H**)
- (b) Acknowledgement of Amendments (See Award/Signature Page Section 13)
- (c) The IFB, pages 2 – 34
- (d) Bid Form (**Attachment A**)
- (e) Applicable exhibits provided as attachments or incorporated by reference

A.3 TERM OF THE CONTRACT:

A.3.1 Base Term: The base term of the firm fixed unit price contract will be for one (1) year from date of award through one year thereafter.

A.3.2 Option Year: The Department shall have the unilateral right to extend the term of this Agreement for four (4) terms of one (1) year or fractions thereof; provided that the Department shall give the Contractor preliminary written notice of intent to exercise the option thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. The Contractor may waive the thirty (30) day noticed requirement by providing a written waiver to the Department prior to the expiration of the Contract.

A.3.3 Option Years Pricing: In the event the Department exercises its option to extend the Contract to cover an option year, the rates or unit prices applicable to such Option Year are set forth in **Attachment A**.

A.4 PRICING:

Bidders shall complete the Bid Form (**Attachment A**) to submit a bid for price per one megawatt (MW) of reduction.

A.5 PROCUREMENT SCHEDULE:

The Procurement Schedule for this procurement is as outlined below:

- | | |
|--------------------------------------|---------------------------|
| • Issuance of IFB | April 8, 2016 |
| • Due Date & Time for Bid submission | April 13, 2016 by 2:00 pm |
| • Bid Opening | April 13, 2016 at 2:15 pm |

A.6 ATTACHMENTS:

The following documents are attached to the IFB:

Attachment A – Bid Form
Attachment B – Bidder-Offeree Certification Form
Attachment C – Tax Affidavit
Attachment D – Subcontracting Plan Form
Attachment E – 2016 Living Wage Act Notice and Fact Sheet
Attachment F – First Source Employment Agreement Form
Attachment G – Service Contract Act Wage Determination
Attachment H – Award/Signature Page

SECTION B SCOPE OF WORK

B.1 Scope of Work and Requirements

The Contractor shall perform tasks to assess a subset of the DGS portfolio for the Regional Transmission Organization, PJM Interconnection (“PJM”), Demand Response Market participation, ensure proper enrollment in the PJM Limited Resource Demand Market, plan and prepare for Demand Response Events, and manage and report on all Market transactions and performance.

B.1.1 Facility and Demand Response Load Assessment

- 1) Analyze historical interval or hourly data and interview site personnel, DGS Sustainability + Energy staff, and DGS consultants to determine account and event-specific kW reduction capabilities across 19 predetermined sites.
- 2) In concert with DGS staff and consultants, determine Firm Service Levels (“FSL”) for each account to be enrolled with PJM for the summer 2016 season. Final decision as to Aggregate FSL value shall be jointly determined by CSP and DGS.

B.1.2 PJM Enrollment

Submit enrollments to PJM for Limited Resource Demand Response participation, via eLRS (PJM’s enrollment system), for each account, monitor progress throughout PJM process, respond to and resolve any enrollment issues with PJM.

B.1.3 Demand Response Event Planning & Preparation

- 1) Provide overview of program requirements to DGS site personnel responsible for managing responsiveness to emergency or test events.
- 2) Develop a Building Performance Plan for each facility enrolled by the CSP, in coordination with DGS staff and consultants.
- 3) Develop emergency/test event notification contact lists for each site and train DGS staff and consultants on notification procedures to include redundancies such as phone calls and text messages in addition to standard email notification.

B.1.4 Demand Response Event Response & Testing

- 1) Upon issuance of an emergency notification from PJM, when applicable, implement notification procedures such that sites can implement kW strategies within 30 minute compliance window. During an emergency event, monitor PJM communication and provide timely notification to each site as to when emergency event will end.
- 2) In the absence of emergency events, coordinate test event schedule with DGS sites, staff and consultants and follow notification procedures to ensure maximum compliance.

B.1.5 PJM Market Monitoring, Verification, and Reporting

- 1) Within 15 days following September 30, 2016, disperse monies from PJM, net of adjustments to reflect performance versus enrollment at \$119.13 per MW for capacity (Pepco Zone) to Pepco or WGL (the current electricity supplier). In addition to capacity payments, CSP will disperse monies resulting for emergency energy payments at \$1,849 per MWh to Pepco or WGL. CSP will provide substantiation for all capacity and emergency energy payments.
- 2) CSP shall base its fee on the following formula:

$$\text{Aggregate FSL} = \text{Aggregate PLC} - (\text{Aggregate Firm Load Level} * \text{EDC Loss Factor})$$

and shall commit to an equal amount of 2016/2017 Pepco DY BRA Limited Resource Capacity. In addition to a fee for services listed above, please provide the following:

1. Expected Aggregate FSL to be enrolled
 2. Fee per kW of Aggregate FSL
- 3) Sign a Letter of Authorization allowing DGS to verify enrollment with and payment from PJM.

B.2 General Requirements

The Contractor and its employees shall obtain and maintain all applicable permits, licenses, authorizations and/or certificates as required by Federal, State, local laws and regulations prior to providing services at any District Facility. A copy of these documents shall be provided to the Program Manager upon request.

SECTION C ECONOMIC INCLUSION

C.1 PREFERENCE FOR SMALL, LOCAL AND DISADVANTAGED BUSINESS ENTERPRISES:

Under the provisions of the “Small and Certified Business Enterprise Development and Assistance Act of 2014”, D.C. Official Code § 2-218.01 et seq., as amended (“Act”, as used in this section), the District shall apply preferences in evaluating bids from businesses that are certified by the Department of Small and Local Business Development (DSLBD) pursuant to Part D of the Act.

C.1.1 Application of Preferences:

Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Bidders that are certified by the Department of Small and Local Business Development as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, or being a local business enterprise with its principal office located in an enterprise zone. (A copy of the certification acknowledgment letter must be submitted with the Bidder’s Bid.) A percentage reduction in price shall be granted to prime Contractors as follows:

- (a) Three (3) percent reduction for a small business enterprise (SBE);
- (b) Five (5) percent for a resident-owned business (RBO);
- (c) Ten (10) percent for a longtime resident business (LRB);
- (d) Two (2) percent for a local business enterprise (LBE);
- (e) Two (2) percent for a local business enterprise with its principal office located in an enterprise zone (DZE);
- (f) Two (2) percent for a disadvantaged business enterprise (DBE);
- (g) Two (2) percent for veteran-owned business (VOB);
- (h) Two (2) percent for local manufacturing business enterprise (LMBE)

C.1.2 Maximum Preference Points Awarded:

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise (CBE) is entitled under the Act is twelve per cent (12%) for bids submitted in response to this IFB. There will be no preference awarded for subcontracting by the prime Contractor with CBEs.

C.1.3 Preferences for Certified Joint Ventures:

A certified joint venture will receive preferences as determined by DSLBD in accordance with D.C. Official Code § 2-218.39a (h).

C.1.4 Verification of Bidder's Certification as a Certified Business Enterprise:

- (a) Any Bidder seeking to receive preferences on this solicitation must be certified at the time of submission of its bid. The CO will verify the bidder's certification with DSLBD, and the bidder should not submit with its bid any additional documentation regarding its certification as a certified business enterprise.
- (b) Any vendor seeking certification in order to receive preferences under this solicitation should contact the:
- (c) Department of Small and Local Business Development

ATTN:

CBE Certification Program
441 Fourth Street, NW, Suite 850N
Washington DC 20001

- (d) All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

C.2 LSDBE UTILIZATION:

C.2.1 Mandatory Subcontracting Requirement:

C.2.1.1 The subcontracting requirement may be satisfied by subcontracting 50% of the dollar volume to any Certified Business Enterprises (CBEs) provided however, that the costs of materials, goods, and supplies shall not be counted towards the subcontracting requirement unless such materials, goods, and supplies are purchased from certified small business enterprises.

C.2.1.2 A prime Contractor which is certified as a Small Business Enterprise shall not be required to comply with the provisions of section C.2.1.1. Bidders shall submit the Subcontracting Plan Form included as Attachment E.

C.2.1.3 Neither the Contractor or a Sub-Contractor may remove a Sub-Contractor or tier-Sub-Contractor if such Sub-Contractor or tier-Sub-Contractor is certified as a Local, Small or Disadvantaged Business Enterprise (LSDBE) unless the Department approves of such removal. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation required under this Contract.

C.2.1.4 A list of Certified Business Enterprises can be found on the District of Columbia, Department of Small and Local Business Development website at <http://dslbd.dc.gov/> DC/DSLBD, click on “Doing Business in the District”, click on “Find CBE Certified Contractors.”

C.3 RESIDENCY HIRING REQUIREMENTS FOR CONTRACTORS & SUB-CONTRACTORS:

C.3.1 At least fifty-one percent (51%) of the Bidder’s team and every sub-consultant’s employees hired after the Bidder enters into a contract with the Department, or after such sub-consultant enters into a contract with the Bidder, to provide the required goods or services, shall be residents of the District of Columbia.

C.3.2 Upon execution of the contract, the Bidder and all of its member firms, if any, and each of its sub-Contractors and sub-consultants shall submit to the Department a list of current employees that will be assigned to work under the contract, the date that they were hired and whether or not they live in the District of Columbia.

C.3.3 The Bidder shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011, and the rules and regulations promulgated thereunder. The Bidder and all member firms, sub-Contractors, tier sub-Contractors, sub-consultants, and suppliers with contracts in the amount of \$300,000 or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement Attachment G with the D.C. Department of Employment Services (“DOES”) upon execution of the contract; (ii) submit an executed First Source Agreement to DOES prior to beginning work; (iii) make best efforts to hire at least 51% District residents for all new jobs created under the contract; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10th of each month; (vi) at least 51% apprentices and trainees employed must be residents of the District registered in a program approved by the D.C. Apprenticeship Council; and (vii) trade Contractors and sub-Contractors with contracts in the amount of \$500,000 or more must register an apprenticeship program with the D.C. Apprenticeship Council.

SECTION D COMPLIANCE REQUIREMENTS

D.1 CONFORMANCE WITH LAWS:

It shall be the responsibility of the Contractor to perform the Agreement in conformance with the Department's Procurement Regulations (27 DCMR § 4700 et seq.) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Department's procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

D.2 LICENSING, ACCREDITATION AND REGISTRATION:

The Contractor and all of its Sub-Contractors shall comply with all applicable District of Columbia, state and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract.

D.3 STANDARD CONTRACT PROVISIONS:

The Standard Contract Provisions for Use with Supplies and Services Contracts (2007) are applicable to this contract and are incorporated by this reference.

D.4 LIVING WAGE ACT:

The Living Wage Act is applicable to this Contract. As such, the Contractor and its Sub-Contractors shall comply with the wage and reporting requirements imposed by that Act (**Attachment E**).

D.5 SERVICE CONTRACT ACT:

The Service Contract Act is applicable to the resulting contract. As such, the Contractor and its sub-Contractors shall comply with the wage and reporting requirements imposed by this Act. Applicable wage determination rates are attached hereto as **Attachment G**.

SECTION E
EVALUATION AND AWARD CRITERIA

E.1 CONTRACT AWARD:

E.1.1 This procurement is being conducted in accordance with the provisions of §4720 of the Department's Procurement Regulations (27 DCMR, Chapter 47).

E.1.2 The District reserves the right to accept/reject bids resulting from this solicitation. The Chief Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.

E.1.3 The District will make an award to the lowest responsive and responsible Bidder.

SECTION F BID ORGANIZATION AND SUBMISSION

This section outlines specific information necessary for the proper organization and manner in which Bidder's bid submissions shall be proffered. References are made to other sections in this IFB for further explanation.

F.1 BID IDENTIFICATION:

Bids shall be proffered in an original and three (3) hard copies placed in a sealed envelope conspicuously marked: Solicitation Number:
DCAM-16-NC-0101 – Curtailment Services Provider

F.2 DELIVERY OR MAILING OF BIDS:

Submissions shall be delivered or mailed to:

Department of General Services
Attn: Kimberly Gray
2000 14th Street, NW 8th Floor
Washington, D.C. 20009
Phone: (202) 727-2800

F.3 DATE AND TIME FOR RECEIVING BIDS:

Submissions shall be received no later than 2:00 pm local time on April 13, 2016. The Bidder assumes the sole responsibility for timely delivery of its submission, regardless of the method of delivery.

F.4 BID OPENING:

A public Bid Opening will be held at 2:15 pm on April 13, 2016 at the 2nd Floor Community Room in the Frank D. Reeves Center.

F.5 ATTACHMENTS

The Bidder shall complete and include the following attachments in their bid:

- a. Bid Form (Attachment A)
- b. Bidder-Offeror Certification Form (Attachment B)
- c. Tax Affidavit (Attachment C)
- d. Subcontracting Plan Form (Attachment D);
- e. 2016 Living Wage Act Notice and Fact Sheet (Attachment E)
- f. First Source Employment (Attachment F)
- g. Service Contract Act Wage Determinations (Attachment G)

SECTION G BIDDING PROCEDURES & PROTESTS

G.1 CONTACT PERSON:

The contact person for this IFB is:

Jerusalem Belai
DC Department of General Services
Frank D. Reeves Center
2000 14th Street, NW, 8th Floor
Washington, D.C. 20005
(202) 724-4108
Jerusalem.belai@dc.gov

G.2 RESERVED

G.3 EXPLANATIONS TO PROSPECTIVE BIDDERS:

Each Bidder shall carefully examine this IFB and any and all amendments, addenda, or other revisions, and thoroughly familiarize itself with all requirements prior to proffering a bid. Should a Bidder find discrepancies or ambiguities in, or omissions from, the IFB and amendments, addenda or revisions, or otherwise desire an explanation or interpretation of the IFB, any amendments, addenda, or revisions, it must submit a request for interpretation or correction in writing. Any information given to a Bidder concerning the solicitation will be furnished promptly to all other Bidders as an amendment or addendum to this IFB if in the sole discretion of the Department that information is necessary in proffering bids or if the lack of it would be prejudicial to any other prospective Bidders. Oral explanations or instructions given before the award of the contract will not be binding.

G.4 PROTESTS:

Protests shall be governed by Section 4734 of the Department's Procurement Regulations (27 DCMR). Protests alleging defects in this solicitation must be filed prior to the time set for receipt of bids. If an alleged defect does not exist in this initial IFB, but was incorporated into the IFB by an amendment or addendum, a protest based on that defect must be filed before the next closing time established for proffering bids. In all other cases, a protester shall file the protest within seven (7) days after the protester knows or should have known, whichever is earlier, of the facts and circumstances upon which the protest is based. All protests must be made in writing to the Department's Chief Contracting Officer ("CCO") and must be filed in duplicate.

Protests shall be served on the Department by obtaining written and dated acknowledgment of receipt from the Department's CCO. Protests received by the

Department after the indicated period shall not be considered. To expedite handling of protests, the envelope shall be labeled "Protest".

This section is intended to summarize the bid protest procedures and is for the convenience of the Bidders only. To the extent any provision of this section is inconsistent with the Procurement Regulations, the more stringent provisions shall prevail.

G.5 RETENTION OF SUBMISSIONS:

All submissions will be retained by the Department and therefore will not be returned to the Bidders. With the exception of proprietary financial information, the submissions will become the property of the Department, and the Department has the right to distribute or use such information as it determines.

G.6 EXAMINATION OF BIDS:

Bidders are expected to examine the requirements of all instructions (including all amendments, addenda, attachments and exhibits) in this IFB. Failure to do so shall be at the sole risk of the Bidder, and may result in disqualification.

G.7 LATE BIDS AND MODIFICATIONS:

- a) Any bid received by the Department after the exact time specified for receipt shall not be considered.
- b) The only acceptable evidence to establish the time of receipt at the Department's office is the time-date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.
- c) Notwithstanding any other provisions of this Invitation for Bids to the contrary, a late modification of an otherwise successful bid which makes its terms more favorable to the DGS may be considered at any time it is received and may be accepted.
- d) Bids shall be irrevocable and remain in full force and effect for a period not less than 120 days after receipt of bids.

G.8 NO COMPENSATION FOR PREPARATION OF BIDS:

The Department shall not bear or assume any financial obligations or liabilities regarding the preparation of any bids submitted in response to this IFB, or prepared in connection therewith, including, but without limitation, any bids, statements, reports, data, information, materials or other documents or items.

G.9 REJECTION OF BIDS:

The Department reserves the right, in its sole discretion:

- (a) To cancel this solicitation or reject all bids;
- (b) To reject bids that fail to prove the Bidder's responsibility;
- (c) To reject bids that contain conditions and/or contingencies that in the Department's sole judgment, make the bid indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award;
- (d) To waive minor irregularities in any bid provided such waiver does not result in an unfair advantage to any Bidder;
- (e) To take any other action within the applicable Procurement Regulations or law;
- (f) To reject the bid of any Bidder that has submitted a false or misleading statement, affidavit or certification in connection with such bid or this Request for Bids.
- (g) To reject as non-responsive any bid that fails to include a subcontracting plan that is required by law.

G.10 LIMITATION OF AUTHORITY:

Only a person with prior written authority from the CCO shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clauses or conditions of the contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this IFB is not effective or binding unless made in writing and signed by the CCO or its authorized representative.

SECTION H INSURANCE REQUIREMENTS

H.1 REQUIRED INSURANCE:

The Contractor shall maintain the following types of insurance throughout the life of the contract.

H.1.1 Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars (\$1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage. The Contractor will be required to maintain this coverage in force for a period of at least two years after substantial completion.

H.1.2 Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its Contractors and Sub-Contractors at or in connection with the Work.

H.1.3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

H.1.4 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Two Million Dollars (\$2,000,000).

H.2 ADDITIONAL INSURED:

Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department and the District of Columbia, and shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

H.3 WAIVER OF SUBROGATION:

All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

H.4 STRENGTH OF INSURER:

All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best’s rating of not less than A- (Excellent) and a surplus

size of not less than XV. All such insurers shall be licensed/approved to do business in the District of Columbia.

SECTION I DEPARTMENT'S RESPONSIBILITIES

I.1 INFORMATION & SERVICES:

I.1.1 The Department will provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Department's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

I.2 DEPARTMENT'S DESIGNATED REPRESENTATIVES:

I.2.1 Chief Contracting Officer (CCO). In accordance with 27 DCMR, Chapter 47, Section 4704 contracts may be entered into and signed on behalf of the District Government only by CCO. The address and telephone number of the CCO is:

Christopher Weaver
Director/Chief Contracting Officer
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009

I.2.1.1 Authorized Changes by the Contracting Officer (CO) and the CCO:

I.2.1.1 The CCO and the CO are the only persons authorized to approve changes to any of the requirements of the Contract. The CO is authorized to approve changes valued up to \$100,000.00.

I.2.1.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the CCO.

I.2.1.3 In the event the Contractor effects any change at the instruction or request of any person other than the CCO, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

I.2.2 Contracting Officer's Technical Representative (COTR):

I.2.2.1 The Contracting Officer's Technical Representative (COTR) is responsible for general administration of the Contract and advising the CCO as to the Contractor's compliance or noncompliance with the Contract. The COTR has the responsibility for the day-to-day monitoring and supervision of the Contract, of ensuring the Work conforms to the requirements of the Contract and such other

responsibilities and authorities as may be specified in writing by the CCO and/or in the Contract. These include:

- I.2.2.1.1** Keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the Contract;
- I.2.2.1.2** Coordinating site entry for Contractor personnel, if applicable;
- I.2.2.1.3** Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;
- I.2.2.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and
- I.2.2.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.
- I.2.2.1.6** The address and telephone number of the COTR is:

Zach Dobelbower
DC Department of General Services
Sustainability + Energy Division
2000 14th Street, NW, 8th Floor
Washington, DC 20009
202-727-8760
zach.dobelbower@dc.gov

I.2.2.2 Contracting Officer's Technical Representative COTR):

Shall NOT Have the Authority to:

- I.2.2.2.1** Award, agree to, or sign any Contract document, change order, change directive, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;
- I.2.2.2.2** Grant deviations from or waive any of the terms and conditions of the Contract;

- I.2.2.2.3** Increase the dollar limit of the Contract or authorize work beyond the scope and dollar limit of the Contract,
- I.2.2.2.4** Authorize the expenditure of funds by the Contractor;
- I.2.2.2.5** Change the period of performance; or
- I.2.2.2.6** Authorize the use of District property, except as specified under the Contract.
- I.2.2.2.7** The Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief for any additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of any unauthorized changes.

SECTION J MISCELLANEOUS PROVISIONS

J.1 EXTENT OF CONTRACT:

The Contract, which includes this Agreement and the exhibits attached hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

J.2 GOVERNING LAW:

The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

J.3 ASSIGNMENT:

The Department and Contractor respectively bind themselves, their partners, members, joint ventures, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint ventures, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

J.4 RETENTION OF RECORDS AND INSPECTIONS AND AUDITS:

J.4.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

J.4.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

J.4.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents

and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

- J.4.4** The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.
- J.4.5** Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.
- J.5.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- J.4.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

J.5 INSPECTION FOR SUPPLIES AND SERVICES:

- J.5.1** To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Contractor or the place of business of any Sub-Contractor in order to inspect or test supplies or services for acceptance by the Department. If inspections and tests are performed at the place of business of the Contractor or any Sub-Contractor, the inspections and tests shall be performed in a manner so as to not unduly delay the Work. Inspections and tests by the Department shall not relieve the Contractor or any Sub-Contractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.
- J.5.2** Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.

- J.5.3** The Department shall have the right to enter the place of business of the Contractor or the place of business of any Sub-Contractor in order to investigate any Contractor or offeror with respect to a debarment or suspension of the Contractor or any such Sub-Contractor.

J.6 LAWS AND REGULATIONS INCORPORATED BY REFERENCE:

All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Department. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

J.7 TAX EXEMPTION PROVISION:

Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

J.8 ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS:

- J.8.1** The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

- J.8.2** The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Sub-Contractor of the Contractor to the Department. The

Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

- J.8.3** The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

J.9 RESPONSIBILITY FOR AGENTS AND CONTRACTORS:

At all times and during both the Preconstruction and Construction Phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Sub-Contractors, Sub-Sub-Contractors, material suppliers, and laborers, and the agents and employees of the Sub-Contractors, Sub-Sub-Contractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

J.10 ETHICAL STANDARDS FOR DEPARTMENT'S EMPLOYEES AND FORMER EMPLOYEES:

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Sub-Contractor or vendor.

J.11 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS:

- J.11.1** If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of

any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

J.11.2 In the event the Contract is terminated as provided in J.12.1, the Department shall be entitled:

J.11.2.1 To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

J.11.2.2 As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

J.12 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

J.13 COVENANT AGAINST CONTINGENT FEES PROVISIONS:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage or contingent fee.

J.14 NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS:

J.14.1 The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal

appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

J.14.1.1 Employment, upgrading, or transfer;

J.14.1.2 Recruitment or recruitment advertising;

J.14.1.3 Demotion, layoff, or termination;

J.14.1.4 Rates of pay, or other forms of compensation; and

J.14.1.5 Selection for training and apprenticeship.

J.14.2 Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

J.14.3 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

J.14.4 The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

J.14.5 The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

J.14.6 The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Sub-Contractor or vendor.

J.14.7 The Contractor shall take such action with respect to any Sub-Contractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

J.15 BUY AMERICAN ACT PROVISION:

The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

J.16 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT PROVISION:

The Contractor agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

J.17 TERMINATION OR SUSPENSION:

J.17.1 Cancellation before Notice to Proceed:

The Department may cancel the Contract at any time before issuance of a Notice to Proceed, in the Department's sole discretion. Such a cancellation shall not be a breach of the Contract, and the Contractor shall not be entitled to any compensation or damages if cancellation occurs.

J.17.2 Termination for Default:

The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. In particular, but without limitation, the Department may terminate the Contract if:

J.17.2.1 the Contractor fails to prosecute the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Contract; or

J.17.2.2 the Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or

J.17.2.3 the Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, technicians, Sub-Contractors or suppliers when payment is due; or

J.17.2.4 becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or has a receiver appointed, or files for dissolution or otherwise is dissolved; or Changes.

J.17.2.5 the Contractor fails to pay its debts in a timely manner or becomes insolvent, or the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Contract and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.

J.17.2.6 the Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

J.17.2.7 If the Department terminates the Contract for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

J.17.3 Termination for Convenience:

J.17.3.1 The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions.

J.17.3.2 After receiving notice of termination for convenience, the Contractor shall (1) stop work on the terminated portion of the Project as of the effective date of the termination and stop placing subcontracts or supply agreements thereunder; (2) consult with the Department regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to the Department; (3) consult with the Department to decide what actions should be taken to protect work in place and equipment that has been delivered and not yet installed, and to render the site safe, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Contractor's possession in which the Department has or may acquire an interest and, as directed by the termination notice or other order from the Department, deliver the property to the Department; and (5) promptly deliver to the Department all computer files it has prepared relating to the Project.

The Contractor shall also promptly notify the Department, in writing, of any legal proceeding arising from any subcontract or supply agreement related to the terminated portion of the Project, and, in consultation with the Department, settle outstanding liabilities arising out of the terminated portion of the Project on the best terms reasonably possible.

J.17.3.3 The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. The Contractor shall not be entitled to recover overhead or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing Work would have exceeded the Lump Sum Price, the Department shall have the right to adjust the settlement figure downward in an appropriate amount. In no case shall the Contractor be entitled to receive an amount in settlement for termination for convenience that would exceed the percentage value of the Work actually performed in accordance with the Contract, multiplied by the Lump Sum Price, and reduced by any damages, liquidated or otherwise, the Contractor may owe the Department.

J.17.3.4 Payment of such amounts shall be the Contractor's sole remedy for termination for convenience.

J.17.3.5 The Contractor shall, promptly after termination, submit a proposal for settlement of the amounts due to it as a result of the termination for convenience. The proposal shall be consistent with the requirements of Subparagraphs 17.4.2 through 17.4.4, and shall be accompanied by such documentation of costs as the Department may reasonably require. Such documentation may include cost and price data in accordance with the Department's Regulations.

J.17.4 Effect of Wrongful Termination:

Any termination for cause which is later determined to have been improperly effected shall be deemed to have been a termination for convenience pursuant to Paragraph 17.4 and shall be governed by that Paragraph.

J.17.5 Continued Responsibility after Termination:

If the Contractor is terminated, either for default or otherwise, the Contractor shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

J.17.6 Suspension:

J.17.6.1 Suspension at the Convenience of the Department:

The Department may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as the Department elects by giving the Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until the Department terminates such suspension, delay or interruption by written notice to the Contractor. No such suspension, delay, interruption or reduction by the Department shall constitute a breach or default by the Department under the Contract Documents. The Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

J.17.6.2 Payment upon Suspension for Convenience.

In the event of suspension, delay, reduction or interruption for convenience by the Department, the Department shall pay the Contractor and the Lump Sum Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

J.17.6.2.1 Additional Costs of the Work, if any, which are incurred by the Contractor, its Sub-Contractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at the Department's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and the Work in progress caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and

J.17.6.2.2 Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted the Work caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay,

suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.

J.17.6.2.3 Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which the Contractor is responsible. Furthermore, the Contractor shall not be entitled to an increase in overhead or profit for a suspension ordered by the Department.

J.18 FALSE CLAIMS ACT:

Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

J.19 INTERPRETATION OF CONTRACT:

All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor to assume entire responsibility for construction of the Project. If there is any inconsistency among the documents comprising the Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this Agreement and its Exhibits, the General Conditions, and the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains.

J.20 INDEPENDENT CONTRACTOR:

In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent Contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

J.21 CONFIDENTIAL INFORMATION:

In the course of the Contractor's performance of the Work, the Department may make available to the Contractor information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose

any such information to others (including its employees or Sub-Contractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

J.22 NO THIRD-PARTY BENEFICIARY RIGHTS:

Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

J.23 MEDIA RELEASES:

Neither the Contractor, its employees, agents or Sub-Contractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

J.24 CONSTRUCTION:

This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

J.25 NOTICES:

All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by tele copier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

If to the Contractor:

Christopher Weaver
Director/Chief Contracting Officer
Department of General Services
2000 14th St, NW
Washington, DC 20009

This Paragraph shall be read as imposing minimum requirements for distribution of required contractual notices, and not as displacing distribution requirements with respect to design documents, construction submittals, periodic reports, and other documents.

J.26 LIMITATIONS:

The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

J.27 BINDING EFFECT; ASSIGNMENT:

The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Contractor, and the Contractor therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. The Contractor shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

J.28 SURVIVAL:

All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

J.29 NO WAIVER:

If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be effected only by an express written waiver signed by the Department.

J.30 REMEDIES CUMULATIVE:

Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

J.31 HEADINGS/CAPTIONS:

The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

J.32 ENTIRE AGREEMENT; MODIFICATION:

The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

J.33 SEVERABILITY:

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

J.34 ANTI-DEFICIENCY ACT:

The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.

J.35 INDEMNIFICATION:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Department and Department's consultants, agents, and employees from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Work itself), but only to the extent caused

by the negligent acts or omissions of the Contractor, a Sub-Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.